



The following constitutes the order of the Court.
Signed: February 8, 2024

A handwritten signature in black ink, reading "William J. Lafferty, III", is positioned above a horizontal line.

William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION

In re

Tracy Lynn Ponte,

Debtor,

Case No.: 23-10148 WJL

Chapter 7

Hearing Held

Date: December 5, 2023

Time: 9:30 a.m.

Location: 1300 Clay St, Ctrm 220/Zoom,
Oakland, CA 94612

**AMENDED MEMORANDUM DECISION ON TRUSTEE'S OBJECTIONS
TO DEBTOR'S CLAIMS OF EXEMPTION¹**

I. Factual and Procedural Background

This matter came before the Court on the Chapter 7 Trustee's ("Trustee") objections (dks. #17, #31, #48) to Debtor Tracy Lynn Ponte's ("Debtor") claims of exemption (dks. #1, #21). On December 5, 2023, the Court held a continued hearing on the Trustee's objections then took the matter under submission. Thomas Kelly III appeared on behalf of Debtor and Brent Meyer appeared on behalf of the Trustee. For the reasons set forth below, the Court sustains the Trustee's objections.

¹ This Memorandum Decision is amended solely to reflect the appearances of the Trustee's and Debtor's respective counsels.

1 On March 27, 2023, Debtor filed a voluntary petition for relief under Chapter 7 of the
2 Bankruptcy Code. (Dkt. #1). In Debtor's Schedule A/B, Debtor listed the following assets: (1)
3 "Charles Schwab retirement account bearing account number XXXX 1125 (ERISA qualified
4 pursuant to 26 U.S.C. § 401 – not property of the estate – listed for information purposes only).
5 Held in the name of Tracy Ponte Family Trust 2016" in the amount of \$55,502.15 ("Inherited
6 IRA"); (2) "Operating Engineers Credit Union retirement account bearing account number
7 XXXX3331. (ERISA qualified pursuant to 26 U.S.C. § 401 – not property of the estate – listed
8 for information purposes only)" in the amount of \$80,218.51 ("Personal IRA"); (3) "[f]uture
9 distribution from deceased father's trust. Administration is still pending. Debtor is 50%
10 beneficiary with her sister. Sister is trustee of the trust. Believed to be less than \$25,000 as there
11 are pending claims for attorneys fees and taxes for the estate" (the "Inheritance"). (*Id.*, Schedule
12 A/B at 5, 7). In her initial Schedule C, Debtor claims exemptions in the Inherited IRA and the
13 Personal IRA under 11 U.S.C. § 522(b)(3)(C), and in the Inheritance under California Code of
14 Civil Procedure ("C.C.P.") §703.140(b)(5). (*Id.*, Schedule C at 1-5).

15 On May 16, 2023, the Trustee filed an objection challenging Debtor's claim of
16 exemptions under § 522(b)(3)(C), arguing that the Inherited IRA and the Personal IRA are not
17 exempt under the Bankruptcy Code's exemption scheme; the Trustee also reserved the right to
18 object to the Inheritance. (Dkt. #17). Following the Trustee's objection, Debtor filed an
19 amended Schedule C to include claims of exemption in the Inherited IRA and the Personal IRA
20 under CCP §703.140(b)(10)(E). (Dkt. #21).

21 As background, after the passing of Debtor's father in 2015, Debtor inherited her
22 father's interest in the funds held in the Inherited IRA. (Dkts. #31 at 4, #48 at 2). Debtor attests
23 that she has not personally made any contributions to, and since then, has elected to receive
24 minimum annual distributions from the Inherited IRA. (*Id.*). As of the petition date, the
25 Inherited IRA had an aggregate balance of \$55,502.15. (*Id.*).

26 On August 29, 2022, Debtor established the Personal IRA at Operating Engineers
27 Local No. 3 Union Federal Credit Union ("OEFCU") and indicated in her application that the
28 initial contribution to this fund was a rollover "from a Roth IRA or eligible employer sponsored

1 retirement plan...” (Dkt. #48 at 2–3). That same day, Debtor deposited \$90,000 into two
2 separate accounts at OEFCU—\$80,000 into a traditional savings account and \$10,000 into the
3 Tracy Ponte PAS Family Trust account. (*Id.* at 3). Debtor then transferred the \$80,000 into the
4 Personal IRA as a “rollover contribution.” (*Id.*). In fact, Debtor received the \$90,000 as part of
5 an equalizing payment pursuant to a marital settlement agreement executed with Debtor’s ex-
6 spouse in July 2021. (*Id.* at 4–5).

7 On July 11, 2023, the Court held a hearing on the Trustee’s Objection pursuant to §
8 522(b)(3)(C) but declined to adjudicate the matter in light of Debtor’s amended claims of
9 exemption, which had been filed shortly before the hearing. Accordingly, the Court gave the
10 parties an opportunity to provide supplemental briefing respecting the amended exemptions and
11 set the matter for resolution at a continued hearing. (*see* Dkts. #31, #48, #50, #52). On
12 December 5, 2023, the Court held a continued hearing and took the matter under submission.

13 **II. Exemption Provisions**

14 When an individual debtor files for bankruptcy, an estate is created which includes the
15 debtor’s “legal or equitable interests...in property.” 11 U.S.C. § 541(a)(1). The Bankruptcy
16 Code, however, allows a debtor to exempt from the estate limited interests in certain types of
17 property through various exemptions found in the Bankruptcy Code or applicable state law. *See*
18 *Clark v. Rameker*, 573 U.S. 122, 124 (2014); *Rousey v. Jacoway*, 544 U.S. 320, 325 (2005).

19 Under § 522(b)(3)(C), a debtor can exempt “retirement funds to the extent those funds
20 are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414,
21 457, or 501(a) of the Internal Revenue Code.” 11 U.S.C. §§ 522(b)(3)(C), 522(d)(12). The
22 referenced sections of the Internal Revenue Code include accounts such as traditional and Roth
23 IRAs which are created by 26 U.S.C. 408 and 408A, respectively. *See Clark*, 573 U.S. at 124.

24 The Bankruptcy Code further provides that states can opt out of the federal exemption
25 scheme and can provide their own forms of exemptions. *See* 11 U.S.C. §§ 522(b)(2),
26 522(b)(3)(A), 522(d). California has chosen to opt out, and has (i) included and made available
27 to debtors a series of exemptions that are purely the creation of the California legislature (*see*,
28

1 *e.g.*, C.C.P. § 704.115)²; and (ii) enacted a separate scheme of exemptions found in §703.140,
2 including § (b)(10)(E) which is identical to the federal scheme under § 522(d)(10)(E), which
3 provides in relevant part: “The debtor’s right to receive ... a payment under a stock bonus,
4 pension, profitsharing, annuity, or similar plan or contract on account of illness, disability,
5 death, age, or length of service, to the extent reasonably necessary for the support of the debtor
6 and any dependent of the debtor...” *See* C.C.P. § 703.140(b)(10)(E).

7 With the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act
8 in 2005, a debtor in opt-out states like California is not limited to the IRA exemption under state
9 law but may also claim an exemption under § 522(b)(3)(C), subject to applicable dollar limits in
10 § 522(n). *See In re Williams*, 556 B.R. 456, 460 (Bankr. C.D. Cal. 2016). Here, Debtor seeks to
11 exempt the Inherited IRA and the Personal IRA under both 11 U.S.C. § 522(b)(3)(C) and C.C.P.
12 § 703.140(b)(10)(E).

13 **III. The Burden of Proof**

14 The Trustee contends that Debtor has the burden of proving that the claimed
15 exemptions are proper, notwithstanding the language of the Federal Rules of Bankruptcy
16 Procedure 4003(c).³ (Dkt. #31 at 2–3). Rule 4003(c) allocates the burden of proof to the
17 objecting party, whereas C.C.P. § 703.580(b) places the burden on the party claiming the
18 exemption. (*Id.*). The Trustee argues that despite the apparent conflict, courts in the Ninth
19 Circuit appear to hold that where a state exemption statute specifically allocates the burden to a
20 particular party the bankruptcy court is required to follow the state law. (*Id.* at 3 (citing *In re*
21 *Bhangoo*, 634 B.R. 80, 85 (B.A.P. 9th Cir. 2021) (holding that “the bankruptcy court is required
22 to apply the state law burden of proof on exemptions claimed in California”) (internal citations
23 omitted); *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding “where a state law
24 exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not
25 change that allocation”)). On the contrary, Debtor argues that the question of the allocation of
26 the burden of proof in the Ninth Circuit is unclear as demonstrated by the collection of cases

27 ² Debtor has chosen not to avail herself of these exemptions .

28 ³ Unless specified otherwise, all “Rule” references are to the Federal Rules of Bankruptcy Procedure.

1 cited by the court in *In re Pashnee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015). (Dkt. #50 at 4). A
2 review of these cases indicates more properly that no court has directly disagreed with the
3 holdings in *Bhangoo* and *Diaz*, but rather, certain opinions have suggested different outcomes
4 for reasons not relevant in this case.

5 In any event, as a practical matter, the Court does not think that deciding who has the
6 burden of proof is germane to the IRA exemption question presented because there appear to be
7 no disputes about the facts relevant to these determinations. The questions presented are purely
8 questions of law.

9 **IV. The Inherited Individual Retirement Account**

10 Traditional and Roth IRAs are federally-defined financial accounts that offer tax
11 advantages to encourage individuals to save for retirement. 26 U.S.C. §§ 408, 408A. With
12 respect to both types of IRAs, Congress set some limits on the creation of such accounts, and
13 conditions pertaining to such accounts, including making certain withdrawals subject to a 10
14 percent penalty if taken before an accountholder reaches the age of 59 ½, to prevent individuals
15 from using both types of IRAs merely as tax-advantaged savings vehicles. *See* 26 U.S.C. §§
16 72(t)(1)-(2).

17 Debtor first claimed an exemption in the Inherited IRA solely under § 522(b)(3)(C) of
18 the Bankruptcy Code. But after amending her Schedule C, Debtor now appears to be claiming
19 that California law controls the analysis, and that federal cases like *Clark* do not alter the
20 applicability and interpretation of California's exemption scheme. (Dkt. #50). In other words,
21 notwithstanding *Clark*'s holding, the Debtor asserts that the Inherited IRA is exempt as a
22 retirement account under California law. In any event, Debtor claims an exemption in the
23 Inherited IRA under both the federal or state exemption scheme, and as such, the Court
24 addresses both in this memorandum.

25 The Court agrees with the Trustee that under a federal law analysis, the Inherited IRA
26 is not exempt. As a general matter, the Bankruptcy Code does not define a retirement account,
27 so the Supreme Court in *Clark* gave that term its ordinary meaning. *See Clark*, 573 U.S. at 127
28 (internal citations omitted). "The ordinary meaning of 'fund[s]' is 'sum[s] of money . . . set

1 aside for a specific purpose.’ And ‘retirement’ means ‘[w]ithdrawal from one’s occupation,
2 business, or office.’” (*Id.* (citing American Heritage Dictionary 712, 1489 (4th ed. 2000))).
3 “Retirement funds” under Section 522(b)(3)(C) therefore means “sums of money set aside for
4 the day an individual stop working.” (*Id.*)

5 Under this conception, the Supreme Court concluded that funds held in inherited IRAs
6 are not “objectively set aside for the purpose of retirement” because *inherited* IRAs hold three
7 legal characteristics distinct from traditional or Roth IRAs. *See Clark*, 573 U.S. at 128. First,
8 “the holder of an inherited IRA may never invest additional money in the account.” (*Id.* (citing
9 26 U.S.C. § 219(d)(4))). Second, beneficiaries of inherited IRAs are required to “either withdraw
10 all of the funds...within five years after the year of the owner’s death or take minimum annual
11 distributions every year” regardless of how many years they may be from retirement.⁴ (*Id.*
12 (citing 26 U.S.C. § 408(a)(6); § 401(a)(9)(B); 26 CFR. § 1.408–8 (Q–1 and A–1(a)
13 incorporating §1.401(a)(9)–3 (Q–1 and A–1(a))). Third, the holder of an inherited IRA “may
14 withdraw the entire balance of the account at any time—and for any purpose—without penalty.”
15 (*Id.*); *see also* 26 U.S.C. § 72(t)(2)(A)(ii). Accordingly, funds in such accounts are not funds
16 objectively set aside for retirement. (*Id.* at 129). Inherited IRAs—to the extent that the account
17 is not inherited from a spouse—are therefore not retirement funds and not qualified for
18 exemption under § 522(b)(3)(C).

19 Here, the Inherited IRA has each of the disabling characteristics set forth above. First,
20 Debtor is unable to make any contributions to the Inherited IRA; indeed, Debtor testified at her
21 First Meeting of Creditors that she has not personally contributed any of her own funds into the
22 Inherited IRA. (Dkt. #48 at 2). The second and third characteristics are also present here
23 because Debtor was required either to withdraw the entire balance—without a penalty—within
24 five years of her father’s death or take minimum annual distributions. (Dkts. #31 at 4). Debtor’s
25 access to the funds was not predicated on her retirement, and in fact, Debtor elected to take

26
27 ⁴ The law, however, makes a limited exception in instances where “the heir is the [account] owner’s spouse...[then]
28 the spouse . . . may ‘roll over’ the IRA funds into his or her own IRA...” *Clark*, 573 U.S. at 127; *see also In re*
Kelly, No. BR 22-00089, 2023 WL 2903988 (Bankr. N.D. Iowa Apr. 11, 2023) (funds from an inherited IRA that
rolled over into a spouse’s existing IRA are considered a retirement account for purposes of section 522(b)(3)(C)).

1 minimum annual distributions from the Inherited IRA starting in 2015 when Debtor was 50
2 years old. (*Id.*). Thus, for the reasons set forth in *Clark*, it is sensible for the Court to conclude
3 that the annual distributions received by Debtor are not made in contemplation of retirement,
4 and the Inherited IRA does not qualify for exemption under the federal schema.

5 Moreover, the limited exception noted under *Clark* for IRA accounts that are inherited
6 from a debtor's spouse does not apply here; Debtor inherited this account from her father.

7 In applying this analysis to the facts presented, the Court also notes the following.
8 First, there appears to be no factual dispute over the source of the funds in the Inherited IRA or
9 about how the Debtor has treated the funds. Second, Debtor has consistently referred to the
10 Inherited IRA as an "IRA" which suggests that Debtor understands that the account is a creature
11 of federal law, bound by the limits and rules set by Congress, and not an account created and
12 organized under California law. Though as discussed more fully below Debtor relies on *In re*
13 *Sherr*, No. 16-10283, 2016 WL 5400983 (Bankr. N.D. Cal. 2016) to support her position that
14 exempting the Inherited IRA under California law is proper, she opted to claim an exemption
15 under the California statute that is essentially identical to the federal statute. (*see* Dkt. #21).

16 Accordingly, on a purely federal law analysis, the Court finds that Debtor is not
17 entitled to exempt the Inherited IRA under § 522(b)(3)(C).

18 However, Debtor also argues that her right to receive payment from the Inherited IRA
19 is exempt under C.C.P. § 703.140(b)(10)(E), which as noted previously is a mirror image of §
20 522(d)(10)(E) of the Bankruptcy Code. (Dkts. #21, #23, #50). Debtor maintains that *Clark* and
21 the line of bankruptcy cases which have found that Inherited IRAs are not exempt, do not
22 govern the interpretation and applicability of California's exemption statutes. (Dkt. #50 at 6).
23 Debtor further argues that because "C.C.P. § 703.140(b)(10)(E) is a California
24 statute...California law controls the interpretation of the statute." (*Id.* at 5). Debtor contends
25 that the Inherited IRA is exempt because it is the kind of account that would fall under a
26 "similar plan or contract" as contemplated in §703.140(b)(10)(E). (*Id.*).

27 It appears to the Court that Debtor has conceded that under a federal analysis, the
28 Inherited IRA would not qualify for an exemption. In asking the Court to conclude that state

1 law provides for a different outcome, Debtor mainly relies on *Sherr* and *Williams*, which,
2 respectively, considered a different state exemption statute than the category of exemption
3 statutes upon which Debtor actually relies in this matter, and a different type of retirement
4 account.

5 Nonetheless, Debtor argues that *Sherr* and *Williams* stand for the proposition that the
6 correct analysis to determine whether the Inherited IRA is exempt turns on whether the funds in
7 the account were set aside and reasonably necessary to support Debtor in retirement and not on
8 whether the Inherited IRA is a retirement account pursuant to federal law.

9 The Court, however, does not find *Sherr* or *Williams* particularly apt or instructive.
10 While the debtor in *Sherr* similarly inherited an IRA from her father, Mr. Sherr claimed an
11 exemption solely under C.C.P. § 704.115 which exempts “[a]ll amounts held, controlled, or in
12 process of distribution by a private retirement plan.” *See Sherr*, 2016 WL 5400983, at *1. Under
13 this statute, “retirement funds are exempt only to the extent necessary to provide support for
14 debtor when the debtor retires.” *Id.* While the *Sherr* court held that inherited IRAs are exempt
15 under C.C.P. § 704.115, the Court declines to extend the holding to this case given that Debtor
16 claimed an exemption under a different California statute, and as it appears to the Court, Debtor
17 has been receiving annual minimum distributions years in advance of retirement.

18 *Williams* is also inapposite because the debtor in that case exempted an income stream
19 from her father’s California Public Employees Retirement System (“CalPERS”) pension under
20 C.C.P. §703.140(b)(10)(E) which specifically lists pension as one of the exemptible assets
21 under California law. *See Williams*, 556 B.R. at 461. The *Williams* court held that inherited
22 pensions were exempt. In so holding, the court not only recognized that pensions are
23 specifically mentioned in the California statute, but also, unlike inherited IRAs, the terms of the
24 documents governing a CalPERS pension control the debtor’s right to withdraw from such an
25 account, and the debtor was receiving payments reasonably necessary for her support. (*Id.* at
26 461–65). Unlike the debtor in *Williams* whose access to the asset is limited and governed by the
27 terms of the pension, Debtor here currently has access to the funds in the Inherited IRA and has
28 control over how to receive such funds, and in fact has elected to receive annual distributions

1 since 2015—years in advance of retirement—without demonstrating that the payments were
2 reasonably necessary for her support or retirement.

3 For all of these reasons, the Court does not find either case persuasive, especially given
4 Debtor’s choice of exemption and the particular circumstances in this case. Moreover, if Debtor
5 is arguing that pursuing an exemption admittedly based on federal law should yield a different
6 result because the exemption emanates from a state statute, the Court would have expected
7 Debtor to have provided some evidence, direct or implied, that in copying the provisions of a
8 federal statute with respect to a federally created and defined type of account, California
9 lawmakers nonetheless intended to treat such accounts differently under the state regime, or
10 intended to articulate some different policy outcome—i.e. that C.C.P. §703.140(b)(10)(E) is
11 supposed to be interpreted differently or more “liberally” in favor of exempting inherited IRAs.⁵
12 However, the Debtor has provided no such evidence of the California legislature’s intent, nor
13 has she articulated an argument in support of a different analysis or outcome under California
14 law.

15 Accordingly, Debtor is not entitled to exempt the Inherited IRA under C.C.P. §
16 703.140(b)(10)(E).

17 **V. The Personal Individual Retirement Account**

18 Like the Inherited IRA, the Trustee argues that Debtor is not entitled to exempt the
19 Personal IRA under § 522(b)(3)(C) and C.C.P. § 703.140(b)(10)(E).

20 As described in Sec. II and IV, *supra*, for funds to qualify as retirement funds under §
21 522(b)(3)(C), “(1) the amount the debtor seeks to exempt must be retirement funds; and (2) the
22 retirement funds must be in an account that is exempt from taxation under one of the provisions
23 of the Internal Revenue Code.” *See In re Williams*, No. 09-43872-A-7, 2011 WL 10653865
24 (Bankr. E.D. Cal June 3, 2011) (internal citations omitted).

25 ⁵ From the Court’s review of C.C.P. § 703.140’s legislative history, there do not appear to be direct or implicit
26 statements from California lawmakers indicating that § 703.140 was intended to broaden federal exemptions. To
27 the contrary, “[a] comprehensive study of the legislative history of . . . § 703.140 as well as its companion statute . . .
28 . § 703.130, reveals that the legislature’s sole expressed purpose was to prevent the stacking of federal and state
exemptions.” *In re Baldwin*, 70 B.R. 612, 615 (B.A.P. 9th Cir. 1987) (emphasis in the original); *see also In re*
Applebaum, 422 B.R. 684, 691 (B.A.P. 9th Cir. 2009).

1 Under Section 408(a) of the Internal Revenue Code, an individual retirement
2 account is: a trust created or organized in the United States for the exclusive
3 benefit of an individual or his beneficiaries, but only if the written governing
4 instrument creating the trust meets the following requirements...[e]xcept in the
5 case of a rollover contribution described in subsection (d)(3) or in section 402(c),
6 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted unless it is
7 in cash, and contributions will not be accepted for the taxable year on behalf of
8 any individual in excess of the amount in effect for such taxable year under
9 section 219(b)(1)(A).

10 26 U.S.C. §§ 408(a), (a)(1).

11 Amounts contributed to an IRA exceeding the yearly statutory limit are “excess
12 contributions.” *See* 26 U.S.C. § 4973(b). According to the IRS, an “excess contribution could be
13 the result of your contribution, your spouse's contribution, your employer's contribution, or an
14 improper rollover contribution.” I.R.S. Publication 590-A, Cat. No. 66302J, at 33. In 2022, the
15 maximum contribution limit for individuals 50 or older is \$7,000.⁶ A rollover contribution must
16 be “distributed out of an individual retirement account.” 26 U.S.C. § 408(d)(3)(A). For each
17 taxable year the excess contributions remain in the IRA, an excise tax “in an amount equal to 6
18 percent” of the amount of the excess funds is imposed. 26 U.S.C. § 4973(a). Funds contributed
19 in excess of the yearly limit are therefore not exempt from taxation.⁷

20 Here, Debtor received \$90,000 as an equalizing payment pursuant to her divorce
21 settlement. (Dkt. #48 at 2–5). Debtor deposited \$80,000 of the funds into a traditional savings
22 account at OEFCU which she later transferred into the Personal IRA. (*Id.*). It is undisputed that
23 the \$80,000 contribution was not distributed out of another individual retirement account. The
24 Court finds that Debtor made a non-qualifying contribution into the Personal IRA in excess of

25 ⁶ *See Traditional & Roth IRAs*, Internal Revenue Service, [https://www.irs.gov/retirement-plans/traditional-and-](https://www.irs.gov/retirement-plans/traditional-and-roth-iras)
26 [roth-iras](https://www.irs.gov/retirement-plans/traditional-and-roth-iras).

27 ⁷ The Trustee argues that all the funds in the Personal IRA is not tax exempt because Debtor purportedly engaged
28 in a prohibited transaction under § 4975(c) of the Internal Revenue Code when she made a single deposit of
\$80,000 into the account from a non-qualifying account. To the extent that the Trustee is asking the Court to make
a finding that Debtor's actions constitute “lending or money or other extension of credit” for the purposes of §
4975(c), the Court declines to reach that conclusion here largely because the issue is not relevant in this case.

1 the yearly statutory limit in the amount of at least \$73,000, and accordingly, because the excess
2 contribution is not exempt from taxation from the time they were deposited in to the Personal
3 IRA, such funds do not qualify for exemption under the Bankruptcy Code. *See In re Brainard*,
4 652 B.R. 1, 10 (Bankr. D. Conn. May 25, 2023) (concluding “[b]ecause funds contributed in
5 excess of the yearly limit are not exempt from taxation under § 408(a), they cannot be exempted
6 by a bankruptcy debtor under § 522(d)(12)”; *In re Smith*, 570 B.R. 844, 853 (Bankr. D. Idaho
7 2017) (finding that since “the deposit in the . . . IRA both exceeded the IRC contribution limit. .
8 . and did not constitute a proper rollover contribution, Debtors’ deposits in the . . . IRA are not a
9 pension, annuity, or retirement allowance accrued under a plan described in § 408 of the IRC as
10 required for an exemption”).

11 For the same reasons, the Court finds the same funds not exempt under C.C.P. §
12 703.140(b)(10)(E), because even assuming, *arguendo*, that the account qualified as a “similar
13 plan or contract” within the meaning of the California statute, Debtor is not entitled to an
14 exemption if the “plan or contract does not qualify under Section...408 or 408A of the Internal
15 Revenue Code.” *See* C.C.P. §§ 703.140(b)(10)(E)(i)–(iii).

16 VI. Conclusion

17 For all the above-cited reasons, the Court sustains the Trustee’s objections as to the
18 Inherited IRA. With regards to the Personal IRA, the Court sustains the Trustee’s objections as
19 to the amount in excess of the maximum contribution allowed in 2022. Trustee to submit an
20 order.

21 ****END OF MEMORANDUM****

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